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2 September 1947

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MEMORANDUM FOR ACTING CHIEF, ADMINISTRATION &amp; SERVICES, OSO

Subject: Claim of [REDACTED]

1. Reference is made to the file on the above claim forwarded to this office by you on 26 August 1947.

2. This office has authority to consider claims only under the Tort Claims Act of 1946, which authorizes this agency to determine and settle claims for money only of less than \$1,000 for damage caused by negligent act or omission of an employee of the Government while acting within the scope of his office "under circumstances where the United States as a private person, would be liable to the claimant for such damage \* \* \* in accordance with the law of the place where the act or omission occurred." Considered under this authority, we believe the argument of [REDACTED] claim resolves itself as follows.

3. [REDACTED] is basing his claim against the Government on an alleged act of omission i.e. faulty packing which occurred in the Government warehouse in Virginia. Apparently, then, Virginia law would govern the liability of the Government to the same extent as it would that of an individual. Insufficient evidence is offered to determine whether or not packing was proper or improper for normal shipment. For this we have only one statement in [REDACTED] letter. On the otherhand, the correspondent of the Board of Underwriters in his certificate wrote "yes" in answer to question 18 - "was the packing sufficient?" although the instructions for that question called for a full description and the opinion of the correspondent as to the adequacy to protect the package against water, leakage, etc. Further, it may or may not be true that better packing than that furnished in this case, would have prevented all or part of the damage.

4. However, under the facts presented, we believe this question to be immaterial as there appears to be no direct causal connection between the alleged negligence and the damage which occurred. The act or omission upon which liability would be based appears clearly to be the negligent, or possibly willful immersion of the package in water or exposure of it to rain. It does not appear that the Government or any agent thereof was in any way connected with this negligence. In addition, it does not appear that such complete immersion or exposure to water was an incident of normal transportation which was to have been clearly foreseen and provided for by

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the Government. In our opinion therefore, there is no basis on which the Government could accept liability for all or any part of [REDACTED] claim and his remedy seems to lie against the shipping company or other agency handling the trunk at the time the act or omission occurred.

5. We note that the Underwriters correspondent states that he had no knowledge of any claim filed against the carrier and that the steamship company declined all responsibility in these cases. We are not aware of any rule of law under which an individual or agency can decline responsibility and thus escape liability for negligent acts or omissions under circumstances such as these, unless an actual waiver from the claimant was obtained.

6. You will note that this memorandum constitutes our legal opinion and not a final administrative ruling. Under the Tort Claims Act, final administrative ruling must be made by the head of the agency or his designee. At the present time, only the Executive for Administration and Management is so designated, although additional designation of the ADSO is under consideration. Such an administrative ruling would be a final action under the Administrative Section of the Tort Claims Act and would leave as the only remedy against the Government, suit in the Court of Claims. There would be no objection prior to such administrative ruling to a letter informing [REDACTED] that on the facts as presented, and under applicable law, the General Counsel is of the opinion that there is no liability on the part of the Government as there is no causal connection between the act or omission alleged and the damage which occurred, and that his only remedy is against the carrier or agency responsible for the trunk at the time it was exposed to water action.

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LAWRENCE R. HOUSTON  
General Counsel

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